1945 HK

File No. S. Bij 1/45

Legal DEPARTMENT

A BRANCH

Subject:-

Civil Suit No. 69 of 1944

Hirachand Kuberchand Shah

vs

The Province of Bombay

Claim Rs. 1000/

For recovery of Rs 900 and further interest from the date Suit

P. 8 - E

File No.

Std Sectt. Slip 24-B

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Report under Rule ~~112~~ 118 of Law Officers Rules

1. (i) Bijapur civil suit No.469 of 1944.

(ii) The suit was instituted on 30-10-44 in the Court of First Class Sub-Judge, Bijapur.

(iii) The parties are as follows.:-

Hirachand Kuberchand Shah owner of the shop styled " Dongarchand Keburchand Shah General Merchant and Commission Agent Bijapur. Plff.

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(iv) The amount of claim is Rs. 1000/-

(v) The date fixed by the court for appearand first was on 4-1-1945.

(vi) Notice of suit has been given under sectio 80 of C.P.C. It is dated 8-10-43, and date of its delivery was before 14-10-43.

II (a) Copy of the plaint in English is at page 7 (file II). A copy of the list of documents annexed to the plaint is at page 13, copies of the documents, referred t therein are at pages 15 and 17 (file II)

(b) The plff was at the bottom of carrying out the work of communication in connection with congressactivities. He collected Rs. 900/- from the merchants as congress fund which was meant to finance the workers in furtherence of the movement, such as sheltering the absconding congress ~~men~~/ men against whom warrant under D.I. rules were pending and employing men for ~~an~~ committing sabotage offences, In view of these facts the District Magistrate, was moved and he issued search warrant under his No.C.D.O. of 8-10-42. In the search Rs.900/- were attached as the amount did not belong to the shop. The grounds for attachment are mentioned in the letter of the D.S.P. dated ~~28xx281~~ 28-1-43. The....

The search and seizure were it appears made under Rule 124 of D.I.Rules and the D.S.P reported that the amount may be forfeiited. The District Magistrate ~~for~~ forfeited the amount as it was the amount collected ~~for~~ for being used for the purpose of or in connection with contravention of the D.I.rules.

These being the facts the statement in para 2 of the plaint that Sub-Inspector did not ~~produce~~ produce any authority to carry on the search and seizure, and all further allegations in that para and in para 3 are not correct. The allegation in para 4 of the plaint to the effect that the D.M. is not entitled to forfeit etc are not correct and are denied Plff cannot claim Rs.900/- nor can he claim any interest.

(c) In view of the facts stated above, the plff has filed a suit for Rs. 900/- and interest. In view of the facts and the law referred to at page 11 the suit ought to be defended on the grounds that the search and seizure and forgeiture were legal and were ~~legal~~ in accordance with Rule 124 of D.I.Rules.

Collector of Bijapur.

Translation of the matter at pages 39 to 40 of File No. I containing papers in the Bijapur Civil Suit No. 169 of 1944.

We, the undersigned panchas viz., (1) Mahamadasa Vallad Sultansa Risaldar residing at Kawaligate, Bijapur, (2) Ramasingh Santramansigh Rajput, residing at Shyapeth, Bijapur, hereby write the panchanama of what we have actually seen. In accordance with the order of the City Police Sub-Inspector, who called us as panchas to the adat shop of Mr. Dongar Chandra Kuberchand Shah to make a panchanama after making a search of the shop, residential house and the godown of Mr. Hirachand Kuberchand Shah,. the present owner of the said shop, and after finding out whether any documents or bulletin etc. concerning the present movement or such other suspicious documents could be found there, we write the panchanama as follows.

Mr. Siddalingappa Sidramappa Avachi, the head munim of the said adat shop was himself present at the said shop and he showed us all the documents in the shop. We went through those papers and also inspected the residential house inside the shop. No suspicious document nor anything concerning the movement was found either in the adat shop or in the house. But one blank book consisting of 50 pages and bearing the heading of "All India Spinners' Association, Karnatak Branch", was found, and it was seized and taken possession of by the police. The total sum of money kept in different purses in the safe placed to the east side in the said shop amounted to Rs. 1049-3-6. Out of that amount , Rs. 900 were seized and taken possession of by the police suspicion.

Out of the three godowns situated on the other side of the road infront of the said shop, the one situated to east side and rented from Mr. Mantri as stated by munim Siddalingappa was inspected by us. The godown situated to the west of the above mentioned godown and taken on hire from Mr Sagappa Halli was also inspected. The godown by

to the west of the aforesaid godown which was hired from Mr. Malkappa Jathi was also inspected. The godown situated to the west of the said adat shop and taken on hire from Mr. Watarkar was also inspected. No suspicious documents nor any suspicious goods were found in all the said godowns. The search of the adat shop, the house and the godowns was made in the presence of the above mentioned munim and his assistants, viz., (1) Gurupadappa. (2) Sidramayya and (3) Irappa. The search was made in accordance with the prescribed precedure. Such is the panchnama written and signed by us on 9-10-42.

Read over to us and is correct.

(Sd. in Kannada) Mahamad Sultan. Risaldar.

(Sd. in Kannada) Ramsingh Santramansigh Rajpur.

Before me

Sd/- illegible.

P. S. I., Bijapur City.

3-5-42

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Translation of the matter at pages 41-42 of File No.1 containing papers in the Bijapur Civil Suit No. 469 of 1944.

Inventry.

We(1) Mahamadsa Vallad Sultansa Risaldar, Kawaligate, (2) Ramasingh Son of Santramasingh Rajput, Bnyapeth, both of Bijapur hereby write the panchanama as under:- We are called by the Sub Inspector of Police, Bijapur City, to the grocery and adat shop of Dongarchand Hirachand Brothers and owned by Hirachand Kuberchand Shah and were asked to make a panchanama in writing after finding whether any document purporting to be against Government or any bulletins etc. existed in the said shop. We accordingly inspected the adat shop as well as the godown.

Mr. P.H. Shirguppi was present in the adat shop. He showed us the documents kept in the safe. Out of these, the following documents, viz., (1) Receipt No. 477 for Rs.4-10-0 dated 6-10-1942 standing in the name of Dongarchand Hirachanda, grocery merchant of the All India Spinners Association, Karnatak Branch. (2) Hind Swaraj or Indian Home Rule, an English book written by Mr. M.K.Gandhi, containing 180 pages, and dated 11-12-1938, (3) One book in English written by Mr. M.K.Gandhi from Yeravada Mandir, second edition, 1935, pages 96, were seized and taken possession of by the police for their further investigation. The remaining adati shops godowns, etc., were inspected and no suspicious articles were found therein. The search was carried out according to the usual procedure and the godown behind the said adat shop was also inspected. No suspicious articles were found there also. No goods were seized. Mr. Shirguppi told us that the said godown was hired by the said person on behalf of Ramagauda Bhimangauda Patil. Such is the panchanama written and signed by us on 9-10-1942.

Read---

Read over to us and is correct.

(sd. in Kannada) Mahamad Sultan Risaldar,

(sd. in Kannada) Ramasingh Santramansigh Rajput.

Before me,

Sd/ Illegible,

P.S.I., Bijapur City.

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las

One Hirachand Kuberchand Shah of Bijapur filed suit No.469 of 1944 against Government to recover a sum of Rs.900 with interest thereon at 6 per cent from 9-10-1942 to 9-10-44 and further interest from the date of the suit. The plaintif who is a congress worker was suspected of having participated in anti-Government activities and disturbances which broke out in 1942. The Police suspected on information received by them that he was harbouring persons against whom warrants had been issued under the Defence of India Rules and was aiding them to abscond. He was also suspected of financing acts of sabotage and according to Police information he had collected a sum of Rs.900 for financing all the aforesaid activities. The District Magistrate, Bijapur was therefore moved to issue a search warrant under Rule 124(1) of the Defence of India Rules, in execution of which his shop styled "Dongerchand Kuberchand Shah, General Merchant and Commission Agent" at Bijapur was searched by Police on 9-10-42. In the course of the search the Police found an amount of Rs.1049-3-6 out of which Rs.900 were seized in the presence of the Panchas. It was subsequently forfeited to Government on the ground that it had been collected by the plaintiff from local persons for supporting and financing acts of sabotage and harbouring and helping to abscond persons responsible for the disturbances. The fact of the seizure was reported to Government by the Dist. Magistrate by his No.C.D.O. dated 26th/27th March 1943. The plaintiff who was interned in the Miraj Sanatorium sent an application to the Collector (26-11-1942) for the refund of that amount. A similar application was sent on 25-9-1943 in reply to which he was informed by the District Magistrate that the amount had been forfeited to Govt. The plaintiff has therefore filed this suit after giving notice under section 80 of the Civil Procedure

File 1 ℔.17

do ℔.1

do ℔ 19

do ℔ 21

File II ℔ 1

Code.

His contentions are that both the search and the seizure are illegal because the District Magistrate had no reason to believe that a contravention of any of the Defence of India Rules or an offence prejudicial to the ~~effect~~ effectual prosecution of war was being or was about to be committed in his shop. Similarly, it is contended that the Police sub-Inspector had no authority to seize Rs.900 merely on suspicion. It is alleged that that amount represented the cash balance in his shop on that particular day.

The suit is proposed to be defended by the Collector on the ground that the forfeited amount was the amount collected by the plaintiff for carrying on his unlawful activities and was therefore liable to seizure.

Sub-clause (b) of Rule 124(1) of the Defence of India Rules authorises a Police Officer in the course of a search to seize anything found in or on such place which the Police Officer has reason to believe has been, or is being or is intended to be used, for the purpose of or in connection with any such contravention or offence mentioned in thi Rule. It will therefore, be for Government to prove that the amount was intended to be used for those purposes. This is clear from the expression "reason to believe" used in sub-clause (b). The Rules do not define that expression but according to section 26 of the Indian Penal Code, a person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise. The ~~mere~~ fact that the plaintiff was concerned in certain unlawful activities is not enough to show that the amount found on his business premises was intended by him to be used in furtherance of those activities. There must be some more cogent evidence to directly connect that

amount with those activities. The District Superintendent of Police who was requested by the District Magistrate to report on the materials on which he recommended the forfeiture of the amount relies on a letter addressed to the plaintiff by one Irappa Isarappa. (see the D.S.P's report dated the 3-1-1945 at p. 25 file 1 and Irappa's letter at p.5 ~~ante~~, file I). The D.S.P., states that "the fact that he was in possession of the congress money and financing the movement is well borne out by the contents" of that letter. With respect, it is submitted that the letter does nothing of the sort. The writer who appears to be under arrest at that time requests the plaintiff to look after the members of his family and to give them financial ~~and~~ aid for household expenses. There is a reference to a boy Kalappa who has done "a work" to whom the plaintiff is requested to give as much "kushi" as he likes. For the rest, the letter merely contains a request to the plaintiff to send the writer's personal belongings and to look after his house. Read as a whole, the letter might perhaps raise a suspicion that the plaintiff had his sympathies towards those who had participated in the disturbances. That however, is far from saying that tne amount ~~that was~~ found in his shop was intended to be used for financing the nefarious activities of those persons. Even the Panchnama states that the amount did not belong to the shop as it had no reference in any of the plaintiff's account books. The search was however made in plaintiff's absence and although ~~the~~ his clerk Siddalingappa was present the Panchanama does not show whether he was given any opportunity to explain the presence of the amount in the shop on that day. The plaintiff alleges that the amount was the cash balance in the ~~amount~~ shop on that day and it is not unlikely that he will produce his account books at the trial in support of his allegation.

Suppose the D.S.P. suggests that the police sub-Inspector seized the amount on

This will be a question of fact and

* p. 21 below

Possibly, the Police may have rightly suspected that the amount was intended to be used for unlawful purposes but ~~to~~ mere suspicion, however well founded, cannot replace proof by legal evidence. As the record stands at present, we have no evidence from which the Court may be effected to ~~effected~~ to conclude that the amount was liable to seizure and forfeiture. The suit does not appear to be worth defending. A compromise may be attempted by offering the plaintiff a sum of Rs.900 and costs and inducing him to give up the claim as regards interest before and after the date of the suit. A

RM
1/6

A.A.L.R. I agree. The suit appears indefensible. Compromise should be effected as at A. If necessary the cost already incurred in filing the suit should also be paid (if Compromise is otherwise impossible).
R.L.A.

2/6/45

Sec. 4 (2)

On the facts the seizure of Rs 900 from the shop of Arachand was hardly warranted. A suit if filed will be indefensible. It is best settled by a compromise.

P.Thuraisingham
9/6/45

0 4265
5-6-45

Sec 40

J agree
9/6/45

Presented on Oct 7-1944.

Sd/ B.N. Kulkarni
clerk of the court.

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11

Civil suit No. 469/1944

In the court of the First Class Sub-Judge,
At Bijapur.

1. Hirachand Kuberchand Shah age 43 caste Jain merchant resident of Bijapur owner of the shop styled " Dongarchand Kuberchand Shah General merchant and Commission Agent" Bijapur. Plaintif:

Vs.

1. Province of Bombay.. Deft.

Claim Rs. 1000/-

Herein plff Hirachand Kuberchand Shah begs to submit as under :-

1. The plff is the owner of the shop "Dongerchand Kuberchand Shah" which is doing commission Agency business in the town of Bijapur since about 25-30 years. He owns also a Kirana shop.

2. The plff was interned in Wanless Wadi in 1942 and during his interment the city Police Sub-Inspector of Bijapur on 9-october 1942 searched the said two plff's shops and attached inter alia an amount of Rs. 900/- in currency note s of the cash balance that was in the said commission agency shop on that day. Thesaid city police Sub-Inspector did not produce any authority to carry on the search and the said seizure but purported to act merely on suspicion. The plff states the search and the seizure made merely on the suspicion bythe city sub-inspector is unauthorised add illegal.

3. Neither there were any reasons for the District Magistrate or Sub-Divisional Magistrate or any first class Magistrate to believe that a contravention of any of the Defence of India Rules or an offence prejudicial to the efficient prosecution of war or to the public safety had been was orwas about to be committed in any of the said shops and any of the daid Magistrates was not entitled to issue any such warrany or order. And the plff states that the said seizure and search even if proved to have been made under any warrant of any Magistrate is unauthorised and illegal.

4. The plff understands that the said city Sub-Inspector handed over the said amount of Rs. 900/- to the District Magistrate and the Dist. Magistrate Bijapur subsequently intimated by his letter of 8-10-1943 to the plff that the said amount was forfeited to the Govt. The plff states that the Dist Magistrate is not entitled to forfeit the amount recovered by the sub-Inspector under an unauthorised and illegal or wrongful seizure. The forfeiture by the Dist. Magistrate is itself illegal and unlawful. And the suit is to recover from the deft the amonnt of Rs. 900/- with interest at 6 per cent from the date of seizure to the date of recovery.

5. The cause of action arose in the town of Bijapur on the 8th of October 1943. And this court has jurisdiction to try this suit.

6. The plff's suit to recover Rs. 900/- and interest at 6 per cent from 9-10-42 to 9-10-1944 which comes to Rs. 108/- on the said amount. The plff remits Rs. 8/- out of the interest and claims to recover in all Rs. 1 00/- and future interest on Rs. 900/- and the valuation of the suit for the purpose of court fee and jurisdiction is Rs. 1000/-.

7. Notice required under section 80 of the civil procedure code and sec. 176 of the Govt of India Act 1935 has been duly given on 8th of october 1943

8. Plff prays

(a) A decree may be passed against the deft directing him to pay to the plff an amount of Rs. 1000/- together with the future interest from the date of suit on the decretal amount at 6 per cent.

(b) costs of the suit.

Bijapur
Dated

sd/ Hirachand Kuberchand.

I Hirachand Kuberchand do hereby state on solemn affirmation that the contents of paragraphs 1, 5, 6 and 7 are true to my personal knowledte and the contents of the remaining paragraph are true to the best of my belief and on information received.

Bijapur.
7-10-44.

sd/ Hirachand Kuberchand.

Filed in court on 7-10-44.
sd/ S.V. Habbu
Pleader.

Deficit court fee to be paid within one week.
sd/
F.C. S. J.

Admitted and ordered that the particulars hereof be entered in the register of civil suits.
30-10-44. sd/ B.N. Kulkarni.
clerk of the court.

Fixed for settlement of issues on 4-11-1945.
sd/
F.C.S.J.

The claim settled and satisfied, out of court (exh. 12)
Suit dismissed for want of further prosecution left to bear his own costs. (exh. 12)
22-6-45.

Sd/ S.S. Alur.
Civil Judge Senior Division.